

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE:

GENERAL MOTORS LLC IGNITION SWITCH LITIGATION

14-MD-2543 (JMF)

This Document Relates to:

Hon. Jesse M. Furman

Barthelemy, et al. v. General Motors LLC

-----X

GM LLC's MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant General Motors LLC (“GM LLC”) respectfully requests the Court grant summary judgment in its favor on certain of plaintiffs Lawrence Barthelemy and Dionne Spain’s claims in their Second Amended Complaint for each of the following reasons:

First, plaintiffs’ alleged Independent Claim against GM LLC under the Louisiana Products Liability Act (“LPLA”) (Count I) fails as a matter of Louisiana law because GM LLC did not manufacture plaintiffs’ vehicle.

Second, plaintiffs’ claims for fraudulent misrepresentation (Count II), negligence and gross negligence (Count III), violation of a seller’s obligations of delivery and warranty in connection with personal injury (referred to by Louisiana statute as “redhibition”) (Count IV), and violation of the Louisiana Unfair Trade Practices Act (“LUTPA”) (Count V) are all preempted by the exclusivity provision of the LPLA.

Third, even if plaintiffs’ non-LPLA claims are not preempted by the LPLA’s exclusivity provision, plaintiffs do not have viable non-LPLA claims as Independent Claims for several reasons:

- Plaintiffs’ fraudulent misrepresentation claim (Count II) cannot survive because there is no evidence in the record to establish the element of reliance;

- Plaintiffs' claims for negligence and gross negligence (Count III) fail because they are predicated on an independent post-sale duty to warn, which Louisiana law does not recognize and which is inapplicable to the facts here in any event;
- Plaintiffs' redhibition claim (Count IV) fails because no buyer-seller relationship exists between plaintiffs and GM LLC;
- Plaintiffs' LUTPA claim (Count V) is time-barred by the one-year statute of limitations.

Finally, plaintiffs cannot properly recover punitive damages for any of their claims.

Louisiana law does not allow punitive damages on the claims asserted by plaintiffs. But even if it did, plaintiffs' Independent Claims fail for the reasons set forth above and, separately, Judge Gerber ruled in his December 4, 2015 Judgment that there can be no punitive damages for any Assumed Liabilities. Thus, there is no basis on which plaintiffs can recover punitive damages.

GM LLC's Motion is further supported by GM LLC's Memorandum of Law in Support of its Motion for Partial Summary Judgment and Rule 56.1 Statement of Undisputed Facts.

WHEREFORE, for the reasons set forth in this Motion and those set forth in the accompanying Memorandum, GM LLC respectfully requests that the Court grant summary judgment in favor of GM LLC and against plaintiffs as to (1) plaintiffs' Independent Claim under the LPLA, (2) plaintiffs' fraudulent misrepresentation, negligence and gross negligence, redhibition, and LUTPA claims (Counts II–V), and (3) plaintiffs' request for punitive damages.

Dated: January 27, 2016

Respectfully submitted,

/s/ Richard C. Godfrey, P.C.

Richard C. Godfrey, P.C.
Andrew B. Bloomer, P.C.
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654-3406
Phone: 312-862-2000
Fax: 312-862-2200
andrew.bloomer@kirkland.com
richard.godfrey@kirkland.com

Attorneys for Defendant General Motors LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2016, I electronically filed the foregoing pleading using the CM/ECF system which will serve notification of such filing to the email of all counsel of record in this action.

By: /s/ Andrew B. Bloomer, P.C.
Andrew B. Bloomer, P.C.